

Attachment 2

June 1, 2016 Summary Judgment Oral Argument Transcript

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
CAMDEN COUNTY, NEW JERSEY
DOCKET NO. CAM-L-3675-14
APP. DIV. NO. _____

_____	:	
MITCHELL WILLIAMS,	:	
	:	
Plaintiff,	:	TRANSCRIPT
	:	
v.	:	OF
	:	
THE MLB NETWORK INC.,	:	MOTION
et al,	:	
	:	
Defendant.	:	
_____	:	

PLACE: Camden County Superior Court
Hall of Justice
101 South 5th St., Suite 150,
Camden, NJ 08103-4001

DATE: June 1, 2016

BEFORE:

THE HONORABLE MICHAEL J. KASSEL, J.S.C.

TRANSCRIPT ORDERED BY:

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I N D E X
June 1, 2016

ARGUMENT

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THE COURT

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THE COURT: Good morning, good morning. Have a seat, have a seat. At least it's cool in here. Williams versus MLB, 3674-14. Appearances please.

MS. MATTIACCI: Good morning, Your Honor. Laura Mattiacci, Console Law Offices, for plaintiff, Mitchell Williams.

MR. MUNSHI: Good morning, Your Honor. Rahul Munshi at Console Law Offices, on behalf of the plaintiff, Mitchell Williams.

MR. HUGHES: Peter Hughes, Ogletree Deakins, for MLB Networking.

MR. BOWMAN: Good morning, Your Honor. Chad Bowman, on behalf of the defendant, Gawker Media.

MR. KELLEY: Tom Kelley, Your Honor, also for defendant, Gawker Media.

THE COURT: And I'll again apologize for certainly screwing up the names again with all, all these attorneys.

All right. We're going to -- oral argument carries over from, what was it, Friday of last week?

THE CLERK: Yes.

THE COURT: Let me just repeat what I indicated. This is a tough case, by the way, in some regards. Many decisions in law are black or white. And judges can make the wrong call. They do all the

1 time. I do all the time. I mean, not all the time,
2 but with enough frequency to require a certain amount
3 of modesty.

4 But it either falls in one hole or the other.
5 This case, and this is, I think, a pretty good example
6 of being in a fairly gray area. The reporting question
7 about the bean ball did have inaccuracies and did, and
8 did depict Williams in the worst light. But, Ms.
9 Mattiacci, taken as a whole, I still don't see
10 sufficient evidence when the standard is clear and
11 convincing evidence, that I can say with any degree of
12 certainty or probability that the author -- what was
13 the reporter's name again?

14 MR. BOWMAN: Tim Burke, Your Honor.

15 MS. MATTIACCI: Mr. Burke.

16 THE COURT: Burke. That Burke knew it was
17 just -- it was complete garbage. Certainly, as I say,
18 he took the liberty of depicting Williams in, in the
19 worst light. Did he sell -- did he do it to sell -- as
20 used to say, sell newspapers. Newspapers are becoming
21 obviously extinct. But in order to generate revenue
22 for the Gawker? I'm sure he did.

23 But you had at least one person say that Mr.
24 Williams instructed to, to hit the kid. I understand
25 there's -- now there's a difference between the bean

1 ball, which apparently is to shoot for the person's
2 head, and a pitch that's meant for the body. And there
3 was a discussion between Mr. Williams and his son. And
4 the next pitch, whether it was 30 seconds later or five
5 minutes later, was a pitch that looked -- not just an
6 inside pitch. It looked like it was going directly
7 towards the batter.

8 I agree with you, there were inaccuracies
9 between some of the reports that were given to this
10 reporter and what's depicted in the film. It's true.
11 But it's not as -- it's, it's not the type of
12 fabrication -- you gave me an example yesterday of well
13 somebody sees justice walking into some cheap motel and
14 reports to the press well that justice is, is going
15 with hookers into the motel, that's a far more black
16 and white situation. If the justice is going into a
17 motel because he wants to or she wants to spend the
18 night, that's perfectly innocent. That there's no
19 degree of gray in that.

20 And if the justice is going into the hotel to
21 patronize a prostitute, there's no gradation of gray in
22 that. There is a certain amount of gradation that you
23 put a lot of emphasis on this wasn't a bean ball.

24 But to make it an easier case, suppose Mr.
25 Williams acknowledged I told the pitcher to strike him

1 in the knee or the leg and the reporter just simply
2 said it was a, it was a bean ball, is that defamatory?

3 MS. MATTIACCI: Your Honor, if -- there's --
4 Mr. Williams -- that would be defamatory because there
5 would be striking a, a person.

6 THE COURT: Well that's where we disagree.
7 Fair enough, but that's where we disagree.
8 Hypothetically I just gave you I think (Indiscernible)
9 dates the disagreement. If we have the exact same
10 case, but the only difference is, is that Mr. Williams
11 said I told the pitcher to strike him below the waist
12 in the leg, all right? And it was -- it got reported
13 out by the Gawker as Mr. Williams instructing the
14 pitcher to bean him in the head, I don't think that
15 would be defamatory.

16 I think the acknowledgment of the truth of
17 the allegation that it was a pitch intended to hit the
18 batter would not make the specific body part that was
19 the subject of the intent -- hitting somebody in the
20 head almost certainly is worse. I guess if you tell
21 somebody to hit somebody in the chest near the heart,
22 that can cause a problem, a serious problem too. But I
23 don't regard that as being defamatory in the context of
24 a public person.

1 There are reasons in this country, though
2 there have been some criticism of the New York Times v
3 Sullivan standard, in that public persons and
4 celebrities are far more victims of false allegations,
5 but there's a reason for that. And it was decided by
6 obviously a pay scale far above mine on the Superior
7 Court.

8 MS. MATTIACCI: Well, Your Honor, you just
9 said, acknowledged that he intended to hit the child in
10 the knees or the, or the hips. The -- that would -- he
11 never ordered that.

12 THE COURT: Oh, I under, I under --

13 MS. MATTIACCI: So I mean, --

14 THE COURT: -- I just cite -- I just changed
15 the facts. I understand that. Mr. -- in this case Mr.
16 Williams said to pitch in tight or something like that.
17 I don't want to misuse the vernacular. But it was
18 reported that Mr. Williams said to pitch him closer or
19 inside or whatever. I understand that.

20 MS. MATTIACCI: He just said pitch to him
21 inside, Your Honor.

22 THE COURT: Fine. But I was changing the
23 facts in order to test the Court's ruling in the sense
24 that suppose I made it an easier case. I took away the
25 factual dispute and gave you a clearly legal issue.

1 The facts are is that the coach -- forget about
2 Williams. The coach tells -- suppose some celebrity
3 coach -- who else, who else is coaching these days as a
4 former baseball player, anybody know?

5 MS. MATTIACCI: I think that there's a lot
6 that are --

7 THE COURT: All right. They like to be out
8 there, but it's obviously salutary that they are
9 coaching the kids and kids are learning the discipline
10 of the sport.

11 But support another, another celebrated major
12 league -- he was a famous guy, by the way. I wasn't
13 into sports, but I remember when he played. But
14 suppose an equally famous celebrity coach tells the
15 pitcher I want you to strike that kid, but I want it
16 below the waist, all right? Because they just struck
17 our -- retaliation because they just struck our, our
18 player the inning before that. And the press reports
19 it as a bean ball instruction. That's -- now that's
20 not a factual dispute. Everybody agrees with that.
21 The question is what's the legal ramification. All
22 right? Is that defamatory? It's clearly inaccurate,
23 right? The press --

24 MS. MATTIACCI: Still --

1 THE COURT: -- when it, when it inaccurately
2 reported it as a bean ball instruction when the
3 instruction was to hit the kid below the waist.

4 MS. MATTIACCI: I would say still it's
5 defamatory because it's still the intentional assault
6 of a child. --

7 THE COURT: Right, but I think --

8 MS. MATTIACCI: -- It's against the rules.

9 THE COURT: -- you're legally wrong. I don't
10 think it's defamatory in the New York Times v Sullivan
11 standard, all right? The law allows there to be plenty
12 of inaccuracies out there even when the inaccuracies go
13 to whether or not the intention was to potentially kill
14 a kid. If you, if you ask a kid to take a baseball --
15 I don't know how fast these pitches are. When I was in
16 little league I got hit by some pitches and it hurt.
17 But that's why kids wear helmets.

18 MS. MATTIACCI: Well, Your Honor, the core of
19 the case is that the reporter wrote "based upon a
20 source that said I heard him order the bean ball, I
21 heard him order it". And there is -- and when you look
22 at the video, no one could have heard that.

23 THE COURT: Agreed. That's inaccurate.
24 There wasn't -- there's no evidence in this case that a

1 bean ball was ordered. I agree with that. There is
2 evidence in this case that somebody said --

3 From the Defense, since I don't memorize his
4 exact writing, what did the source. I don't know if it
5 was number six or source six --

6 MS. MATTIACCI: It's source number six, Your
7 Honor.

8 THE COURT: -- said --

9 MS. MATTIACCI: It said, "I heard him order
10 ... here it is. I -- after -- it says, "He also called
11 his pitcher and catcher to the side before the bottom
12 of the fifth", which it did not happen.

13 THE COURT: Yeah, I agree, it's inaccurate.
14 He didn't call the pitcher. He called the catcher.

15 MS. MATTIACCI: "And told his pitcher to hit
16 him with the first pitch".

17 THE COURT: That's what, that's what I'm
18 focusing on. --

19 MS. MATTIACCI: Right.

20 THE COURT: -- To hit him with the -- and by
21 the way, when you look at it, what happens is the first
22 pitch occurs. And clearly to me there's an inference
23 that the pitch was aimed at the batter. It wasn't just
24 some kid throwing the ball errantly. Clearly -- in
25 fact we used to call it -- I don't know if they call it

1 this, a brush back pitch. It clearly was -- it clearly
2 actually was more than --

3 MS. MATTIACCI: A brush back pitch --

4 THE COURT: -- a brush back --

5 MS. MATTIACCI: -- is not intended to hit the
6 child though. That's just --

7 THE COURT: Yeah, you know what, when you're
8 a ten-year-old, you know, maybe, maybe you're not that
9 accurate to get one inch to the left or one inch to the
10 right. I would, I would not feel comfortable 60 feet
11 and six inches from a ten-year-old who was instructed
12 just to brush me back. --

13 MS. MATTIACCI: Well, Your Honor, with all
14 due --

15 THE COURT: -- I'm more concerned that maybe
16 the pitch would go three inches to the, to the right
17 and hit me. And whether or not it's in the head or
18 somewhere else, I don't feel like getting hit by a
19 baseball.

20 MS. MATTIACCI: Well I understand, Your
21 Honor. But with all due respect, it's the -- this is
22 an elite level of, of children. I mean, this is like,
23 this is -- if they were -- there are people that are
24 prepared for the Olympics in three years. I mean,
25 these are high level athletes. And he knows --

1 THE COURT: These are ten-year-old kids, not
2 high level athletes.

3 MS. MATTIACCI: But, Your Honor, if you saw
4 the -- this is, this is travel -- you have to try out
5 for the team. It's \$3000 to be at the tournament. We
6 can show clips of, of how good these, these kids are.
7 They're --

8 THE COURT: And (Indiscernible) -- it's been
9 a long time since I was a ten-year-old. But I can tell
10 you a ten-year-old is a ten-year-old. And I can tell
11 you -- I don't care if it's, if it's major league. And
12 I'll be the first to confess I can't tell the
13 difference between a major league game and a minor
14 league game in terms of performance.

15 But I can tell you this. That I do not
16 regard it as being defamatory once we focus on the
17 legal issue as to whether or not the added aggravating
18 factor of alleging that it was a bean ball as opposed
19 to what source six said, which is basically hit the kid
20 without specifying what part of the body was the intent
21 of the hit, involving ten-year-olds, all right, who --
22 there are plenty of major league pitchers, by the way,
23 who I understand don't have all that great control over
24 their pitches. It's not like --

1 MS. MATTIACCI: I understand. But, Your
2 Honor, --

3 THE COURT: -- I mean, Sandy Koufax, which is
4 a name that -- he pitched well before your time. But
5 when I was a kid he was a very big celebrity pitcher
6 who could throw a baseball about 100 miles an hour,
7 which is pretty lethal. And when he started out he was
8 wild. He must have been a -- quite an experience if
9 you were a batter in Brooklyn in the mid-1950's facing
10 a 20-year-old who could throw a baseball 100 miles per
11 hour. And you didn't know whether or not it was going
12 to end up six, six feet to your left or six feet to
13 your right, or whether or not it was coming straight at
14 you. And that was major league level. These are ten-
15 year-olds.

16 MS. MATTIACCI: Yes, but, Your Honor, you're
17 putting your own admittedly inexperience thought
18 process and judging these facts, when these are facts
19 that are in dispute that the jury should --

20 THE COURT: But I'm not, I'm not, I'm not --
21 I have to judge the facts. I have to judge it. If you
22 take an appeal an appellate -- two or three Appellate
23 Division judges will judge appeal (sic) -- if it gets
24 to the New Jersey Supreme Court, you'll have seven
25 Supreme Court justices. And they all bring to the

1 table our experiences. What else can they do? I can't
2 block it out. I can't, I can't put myself in the shoes
3 of either Mr. Williams or Mr. -- what's the reporter's
4 name again?

5 MS. MATTIACCI: Mr. Burke.

6 MR. BOWMAN: Mr. Burke, Your Honor.

7 THE COURT: Mr. Burke. I can't put myself in
8 their shoes and live their lives and take their life
9 experiences and then focus on the case based upon how
10 they've lived their lives. I have to do it based upon
11 what I have. And again, --

12 MS. MATTIACCI: I know.

13 THE COURT: -- we come to the same -- I come
14 to the same conclusion.

15 MS. MATTIACCI: Well can I, can I bring you
16 back then to the, to the source? Because the most
17 important part is the only source that he has about --
18 even if we assume bean ball, we've just put bean ball
19 aside and we just talk about an instruction to hit the
20 batter. He says I heard him and my pitcher heard him
21 and told the ump. That's, that's the relay that was --
22 supposedly happened to back up this allegation. And
23 when you watch --

24 THE COURT: Yeah, but here's what I'm
25 focusing on. I am not -- here's what I'm not doing.

1 This is also before your time, but it's a matter of
2 this -- do you remember there's some Zapruder films
3 from the Kennedy assassination?

4 MS. MATTIACCI: Yes, well I've read about
5 them.

6 THE COURT: Okay. Have you ever seen the
7 film?

8 MS. MATTIACCI: No.

9 THE COURT: It's a film. All right. It's
10 been the subject probably of ten million hours of
11 scientific analysis where literally every frame of this
12 Zapruder -- by the way, the amateur videographer was
13 Abraham Zapruder, Z-A-P-R-U-D-E-R I believe it's
14 spelled. He's been dead many, many years. He was at
15 Dealey Plaza that day in Dallas. And the film has been
16 analyzed with scientific, with a scientific fine tooth
17 comb for the past 50 years.

18 I am not doing that with the 90-second,
19 three-minute, four-minute film here, all right? There
20 was an allegation made that a pitcher, who had a repu
21 -- that a coach, who had a reputation when he was in
22 professional sports -- I said previously, but I think
23 it's unfair to simply judge somebody today based upon
24 what the alleged -- how they allegedly behaved 20 years
25 or so ago. But, nevertheless, the law requires me to

1 factor people's reputation, even old reputations into
2 the way they might behave prospectively. And Mr.
3 Williams was not known as Mother Theresa when he was a
4 baseball player.

5 And when you focus on multiple forces and
6 what they allege, and when you look at the film of what
7 happened, I cannot say as a matter of law that there's
8 clear and convincing evidence that Mr. -- what was his
9 name again?

10 MS. MATTIACCI: Burke.

11 MR. BOWMAN: Burke, Your Honor.

12 THE COURT: Mr. Burke, I probably should
13 write that down. That Mr. Burke knew the ar -- the
14 allegations were false or probably knew the allegations
15 were false when they were published by the Gawker.

16 And I want to give you one last chance to put
17 your concerns on the record. I want to give all the
18 Defense attorneys their chance to put on the record
19 what they think I might have missed in my analysis of
20 the case. And I want to move onto the next allegation.

21 MS. MATTIACCI: Yes, Your Honor, it's, it's
22 not just that he knew that it was false. Darunda
23 (phonetic) makes clear that if the allegations are so
24 inherently improbable that only a reckless man would
25 have put them into circulation.

1 And the allegation that he said he was basing
2 it off of a source that said I heard the pitcher and
3 the ump -- and told the ump, and we have video evidence
4 that that never occurred -- there is no communication
5 that he -- that anybody around that conversation could
6 have heard the statement.

7 Secondly, to the extent even if somebody had
8 supersonic hearing to hear something, the reaction of
9 the folks that are in the vicinity belie, make it
10 inherently improbable that a intentional assault of a
11 child, whether it be at the head or the body was
12 ordered. Because an adult who heard that would have
13 reacted in some manner, stopped the game, told the
14 umpire, made sure that that ten-year-old did not go up
15 to the plate only to be beaned. And that did not
16 occur. So it was inherently improbable that Mr.
17 Williams gave that instruction.

18 And to the extent, Your Honor, that you're
19 going to say well Mr. Williams had a reputation to be
20 wild, to make the leap that he would then instruct the
21 intentional assault of a child because he had a
22 nickname of the Wild Thing, is, is beyond -- it's
23 beyond the pale. I mean, that --

24 THE COURT: No, but it's not that, it's not
25 that simple. It's not that simple. I'm certainly not

1 saying that because somebody's nickname when they were
2 a professional athlete decades ago, that, therefore,
3 the most outlandish allegation that's done 25 years
4 later must be true.

5 What I'm saying is that -- and I'm commenting
6 because the Defense in their briefs have argued
7 relentlessly that I should factor in the plaintiff's
8 reputation in determining whether or not there was bad
9 faith in publication of these allegations. And what
10 I've done in the past actually is distanced myself from
11 that and tried to look at the facts as best they have
12 been known by Mr. Burke without regard to whether or
13 not his nickname was the Wild Thing or the Wild One or
14 whatever it was.

15 But I would be legally in error if I simply
16 shut my eyes to the fact that Mr. Williams had a
17 reputation for being a bit outside the box many, many
18 years ago. And he did not have a reputation for being
19 somebody that was very docile. That's the best way I
20 can put it. That's as I understood it. And I, I
21 wasn't, I wasn't a sports fan. But I heard of him and
22 that's what I heard. Maybe that's unfair, but that's,
23 that's in the reporter's head, you know.

24 MS. MATTIACCI: It, it -- but, Your Honor,
25 it's not in the reporter's head. All those documents

1 that the Defense attached, none of them were reviewed
2 by Burke. Burke didn't read any of those articles
3 before --

4 THE COURT: I'm not talking about the
5 documents. I -- Burke is a sports reporter, right, of
6 some sort?

7 MS. MATTIACCI: Some, sometimes.

8 THE COURT: Right. My guess is he knew and
9 thought that Mr. Williams had a reputation as a major
10 league baseball player, that had Mr. Williams been
11 something other than Muhatma Gandhi, right? That's the
12 point I'm making.

13 MS. MATTIACCI: But it -- I understand what
14 you're saying his reputation as. I mean, --

15 THE COURT: Mr. Williams was known as, as
16 being an individual that created a stir. No?

17 MS. MATTIACCI: Okay. So just because he --

18 THE COURT: Where's the nickname Wild, Wild
19 Thing come from? I don't know. Maybe you tell me.
20 Where -- how did he get that? It's not in the record
21 before me. Does anybody explain it? That was his
22 nickname.

23 MS. MATTIACCI: It was, but it -- that was,
24 that was because of his control of the pitches. I

1 mean, he, himself, would -- had, had a style that when
2 he threw, he fell to the ground when he --

3 THE COURT: Fair, fair enough. Your
4 contention is, is that Mr. Williams had no reputation
5 at all for being a fiery personality.

6 MS. MATTIACCI: No, I mean, he had, he had a
7 personality --

8 THE COURT: Well that's my point.

9 MS. MATTIACCI: Right. Well Mr. --

10 THE COURT: I don't, I don't --

11 MS. MATTIACCI: -- Mr. Munshi has reminded
12 me, Mr. Burke testified he did not know where the
13 nickname came from. He did not know the, the source of
14 the nickname.

15 THE COURT: Yeah, but he, but he -- I
16 understand that. He's not an expert on, on Mitchell
17 Williams. What I'm saying is, is that Mr. Williams has
18 -- I think it's fair to say either had in the past or
19 has presently, I don't know, a reputation -- I think
20 that's the fairest characteration (sic) as a fiery
21 personality, a big personality, that type of thing, and
22 not as being a docile person. That's the point I'm
23 making. If that's an unfair characterization, so be
24 it. But that's my understanding of it.

1 But more importantly, Burke is the one you'd
2 have to question about to what extent he thought Mr.
3 Williams' reputation played a role, if anything at all,
4 in determining the accuracy of these accusations when
5 they were coming into him. The "him" being Burke.

6 MS. MATTIACCI: Yeah, he -- all he had was
7 one e-mail from a parent that said that he was tossed
8 out of a game seven years ago. I mean, that's, that's
9 it. He had no other -- he didn't do any investigation.
10 He didn't read any articles --

11 THE COURT: But was Burke asked at his
12 deposition, a day before this first e-mail came in
13 about Mr. Williams did you have any type of knowledge
14 concerning Mr. Williams' reputation, good, bad or
15 indifferent. Was he asked that --

16 MS. MATTIACCI: Yes, --

17 THE COURT: -- at his deposti --

18 MS. MATTIACCI: -- yes.

19 THE COURT: -- and what did he say?

20 MS. MATTIACCI: He didn't -- he just knew of
21 him as a ML -- as a pitcher. --

22 THE COURT: All right.

23 MS. MATTIACCI: -- He didn't, he didn't have
24 any preconceived notions about him. --

25 THE COURT: All right. That's what he said

1 --

2 MS. MATTIACCI: -- He really didn't know him.

3 THE COURT: Fair enough, if that --

4 MS. MATTIACCI: He said he was like, I think
5 an Orioles fan or something.

6 THE COURT: All right. Well the Defense will
7 have to explain why they put so much emphasis then in
8 their briefs about Williams' reputation. That's fine.
9 All right, go ahead.

10 MS. MATTIACCI: And, you know, I don't -- so
11 the -- in addition to that, I mean, we have set forth,
12 and in the papers that I submitted yesterday, Your
13 Honor, that we're talking about the, the, the ways in
14 which the courts look at how we can establish actual
15 malice. We're not going to be able to cut open the
16 brain of Burke and say this is what he -- the brain
17 says he was thinking. We have to use circumstantial
18 evidence. And the circumstantial evidence that the
19 courts say that we look to is whether there -- the
20 allegations were so inherently improbably. And I think
21 --

22 THE COURT: Right.

23 MS. MATTIACCI: -- looking at the, looking at
24 the reaction of those when this alleged ordering of the
25 hit occurred, nobody reacts. Nobody does anything. If

1 that, if that actually happened, then somebody would
2 have reacted.

3 First -- and also let me say that Burke,
4 Burke just wrote an article about how Mr. Williams was
5 ejected from a game, from having an argument with an
6 umpire and saying a curse word. Then he gets
7 information about -- five days later about another game
8 that happened a day after and there's no ejection.
9 There's no ejection from this game. There's, there's
10 no even allegation that that happened.

11 So in Burke's mind -- if you just got
12 information that he was ejected from a game for
13 cursing, but now you have an allegation he actually
14 ordered the intentional assault of a ten-year-old in
15 view of an umpire with an um -- and the umpire was told
16 about it, yet he was not ejected, that would cause
17 serious doubt in the mind of Mr. Burke that maybe the
18 allegation is not true.

19 And he went and he published it anyway
20 because he wanted the story that he wanted. And as the
21 expert says, and looking at the expert report, which is
22 -- should not be discounted here, he says that the fact
23 that, that in reading all of the materials, in his
24 expert opinion Mr., Mr. Burke had the story he wanted
25 and he fixed the facts to be how he wanted them.

1 And of most importance was the fact that
2 these sources that came forward, Mr. Burke told them,
3 imposed anonymity on them. I'm not going to give your
4 name. I'm just going to use your information. And he
5 did that because he entertained serious doubts as to
6 the truthfulness of what was being published, because
7 had he given the full story, the full truth, he knew
8 that the story would fall apart because it was just
9 being maligned by parents of the other team.

10 There's a line in Mr. Burke's second article
11 where it says a source told us that he threw the pitch
12 with the intent to throw the batter out, to get the
13 batter out of the game, the pitcher out of the game.
14 That is from no source. There is no source that says
15 that. And yet he says a witness said that that was to
16 throw the batter out of the game.

17 We looked at -- we have source six in the
18 Facebook page. We have source, source seven, an
19 affidavit from source seven, plus an interrogatory
20 response from source seven. He never says in there
21 that, that that -- it was with the intention of
22 throwing the kid out of the game.

23 He wrote the story with the facts that he
24 wanted, even though the sources contradicted it and the
25 video didn't support it. And he did it anyway.

1 And that's why -- I mean, when we're looking
2 at what is actual malice: allegations so inherently
3 improbable, only a reckless man would put them in
4 circulation and -- or, or where there are obvious
5 reasons to doubt the voracity of the informant.

6 You have to doubt the voracity of the
7 informant of source six when what he says happened
8 could not have happened when you look at the video.
9 And that's the only source that they have of a hit
10 batter incident.

11 So that is more than enough that we would
12 need. And when you take all the inferences in favor of
13 the plaintiff to meet the standard for actual malice
14 under the law, Your Honor, it's for -- a jury question
15 that the jury should decide.

16 MR. BOWMAN: Your Honor, may I be heard?

17 THE COURT: Of course. I haven't forgotten
18 you're standing there. But I --

19 MR. BOWMAN: I don't want to interrupt, but
20 --

21 THE COURT: No, but it was clear to Ms.
22 Mattiacci that I'm going in your direction. So I'm
23 giving her ample opportunity, since almost certainly
24 there's going to be an appeal, to put on the record

1 that what she wants to put on the record in terms of
2 her argument.

3 But I should note the briefs in these cases
4 with the appendices probably weigh 30 pounds. And it's
5 hard to imagine that either of you could make an
6 argument orally that you haven't made repeatedly in any
7 of the briefs. Remember, the briefs are part of the
8 appellate record.

9 But I'll just comment before I give -- is it
10 Mr. Bowman?

11 MR. BOWMAN: Yes, Your Honor.

12 THE COURT: Before I give Mr. Bowman the
13 floor, that it's all well and good to look at the
14 published decision and reiterate what the test is.
15 That's perfectly appropriate. But everybody, every
16 practicing attorney that does defamation work
17 understands that if the victim of the alleged
18 defamatory conduct is a celebrity, is a public person,
19 that the hurdle that they have to jump over in order to
20 even get the case before a jury is very, very
21 substantial. And that is not, and that is not by
22 accident. That is designed to do that. The courts are
23 encouraged.

24 You know, you just correctly, Ms. Mattiacci,
25 stated the law in regards to well somebody's mental

1 state has to be proven circumstantially. I can't get
2 into the brain of Mr. Burke. Nobody can. So we look
3 at what he, what he says he knew what was available and
4 we decide whether or not a jury should be the ones to
5 ultimately decide whether he entertained serious doubts
6 about the accuracy of the allegations contained in
7 these reports.

8 But in defamation actions where the standard
9 is New York Times v Sullivan, the courts are encouraged
10 to pull the trigger. And I'll just read one case. I
11 thought I was going to read one case. There are case
12 laws (sic) -- there are cases that very clearly
13 encourage trial court judges not to sit back and simply
14 say well those are -- these are all jury issues when
15 they involve defamation causes of action. And I wish I
16 had the cases handy. You are both well aware of them.

17 But there's a reason for that. We have the
18 First Amendment in this country. I don't want to be
19 sanctimonious. But the only that the sanctim -- the
20 only way that the First Amendment has life if we -- is
21 if we give the benefit of virtually every doubt to the,
22 to the media outlet when they make allegations against
23 public persons, all right?

24 If you're a public person in you're the
25 victim of a false allegation, maybe you don't feel all

1 that thrilled that some judge is saying well the First
2 Amendment requires you to, in essence, have to defend
3 against false allegations.

4 But if we allow all these allegations of
5 falsity to go to juries, there's no -- media outlets
6 can't afford to defend in every court in this country
7 every time some celebrity, some public person, some
8 politician, some judge -- to some extent I'm a public
9 person. You could go out there, Ms. Mattiacci, and say
10 that I have leprosy. I don't have leprosy, by the way.
11 But if you make the allegation, it would presumably be
12 governed by the New York Times v Sullivan standard.
13 I'd have to show, if I decided to sue you for
14 defamation, that you had to have known that I didn't
15 have leprosy.

16 Suppose Mr. Bowman over there whispers in
17 your ear that I do have leprosy. And you say well
18 that's my source. I probably don't even get to a jury
19 probably. Who knows? But that is done to protect your
20 First Amendment right to speak about me.

21 So again, I don't want to be too
22 sanctimonious about it, but there are reasons why
23 there's a very, very a high standard that's put in
24 effect and whether or not I believe that -- I'm not
25 going to go any further about what my own personal

1 beliefs are. It's legally irrelevant. That's as best
2 I --

3 Mr. Bowman, you've been itching to go for a
4 long time now. So let me give you 15 seconds.

5 MR. BOWMAN: Your Honor, I'm happy to receive
6 my time. I have some factual disagreements with the
7 representations Ms. Mattiacci has made about the
8 record. I'm happy to discuss those if there's anything
9 that particularly troubles you. But I think you have
10 the standard --

11 THE COURT: But she's, she's made certain
12 point. If you do look at the film there are obviously
13 some glaring inconsistencies. And perhaps the most
14 disturbing -- I'm not concerned about the small things.
15 One of the sources said Williams spoke to both the
16 catcher and the pitcher. He didn't. He spoke just to
17 the catcher.

18 But if the source says that people heard
19 Williams order a brush back pitch or a hit pitch,
20 whatever you want to call it, it doesn't look like
21 anybody at the stadium was up in arms about it. You
22 would think that if a coach, celebrity or not, is
23 ordering a ten-year-old to hit another ten-year-old,
24 and then the pitch occurs, they would have been up in

1 arms. How do you explain the rather docile response by
2 everybody on the field?

3 MR. BOWMAN: Well Mr. Williams testified in
4 this case that as soon as the batter was hit both the
5 -- you can see both the coaches coming on the line.
6 And the coach for the other team yelling I told you, I
7 told you to the umpire. --

8 THE COURT: Well let's play it. Let's, let's
9 see concretely what it is that you say supports that.

10 MR. BOWMAN: Mr. -- if you look at the -- I
11 think paragraph 75 of the statement of undisputed
12 facts, Mr. Williams testified to that. So --

13 THE COURT: I don't, I don't have a crystal
14 recollection --

15 MR. BOWMAN: Right. No, I --

16 THE COURT: -- of paragraph 75 --

17 MR. BOWMAN: I'm just giving you the citation
18 to the statement of undisputed facts. It's the --

19 THE COURT: Let's play it.

20 MR. BOWMAN: -- hit by pitch clip.

21 THE COURT: Let's play it.

22 MR. BOWMAN: And so -- look, Your Honor, even
23 if it's ambiguous, clearly you're right, that a
24 reporter's rational interpretation of an ambiguous
25 document --

1 (Video recording played)

2 THE COURT: I don't -- we'll give you a
3 chance to set it up --

4 MS. MATTIACCI: You'll notice as well, nobody
5 speaks to the umpire.

6 THE COURT: Let's -- let me allow Mr. Bowman
7 to get to the point where the pitch occurs. And you
8 show me where the out -- where the parents and the
9 coaches are outraged that some ten-year-old was
10 intentionally struck. Show me where that happens.

11 MR. BOWMAN: Sure. I'm going to turn the
12 sound for --

13 (Video recording continues momentarily and stops)

14 MR. BOWMAN: So, Your Honor, what I'm trying
15 to illustrate is that Mr. Burke's interpretation is not
16 unreasonable and in fact --

17 THE COURT: No, but you're making, you're
18 making -- I understand. You're making arguments now.

19 MR. BOWMAN: Right, yeah.

20 THE COURT: One of the main points that the
21 plaintiff does have, in looking at the big picture --

22 MR. BOWMAN: Yeah.

23 THE COURT: -- is if you have an allegation
24 that the pitcher was actually instructed to hit the
25 batter and then it's on film that it occurs, you would

1 expect there to be a bit more outrage somewhere on, on
2 the field. Aren't parents watching this?

3 MR. BOWMAN: Parents are watching that, Your
4 Honor.

5 THE COURT: Is the, is the kid that got hit,
6 is his parents, is his parents there, are his parents
7 there?

8 MR. BOWMAN: The, the story reported and
9 discovery has, has revealed that the kid who heard that
10 or thought he heard that went and talked to the two
11 coaches. And then the two coaches, after the, the, the
12 hit by pitch, come down and talk to the umpire and the
13 umpire said I didn't hear it, and sends them both back.
14 But they did both come down to complain, Your Honor.

15 THE COURT: Is that disputed by the
16 plaintiff?

17 MS. MATTIACCI: Yeah, absolutely, Your Honor.
18 There --

19 THE COURT: Let's play it, let's play it. We
20 may not hear it, but let's see -- after the pitch who
21 at least looks like they're complaining about the
22 pitch.

23 MR. BOWMAN: Sure. Now I'll turn the sound
24 up when we get to the hit by pitch, so if you can pick
25 up anything.

1 THE COURT: Fair enough, fair enough.

2 MR. BOWMAN: What's happening?

3 UNIDENTIFIED: Going backwards.

4 MR. BOWMAN: Oh.

5 MS. MATTIACCI: I would just like to point
6 out, Your Honor, that apparently this ordering the
7 assault of a child happened like a minute and 45 minute
8 -- seconds ago and everyone is just warming up and
9 walking around and doing nothing.

10 THE COURT: Well they may not be --

11 MR. BOWMAN: Ms. Mattiacci --

12 THE COURT: -- I -- but I agree, not
13 everybody in the stadium -- it's not like Williams had
14 a loudspeaker and said hit the next pitcher. He's
15 whispering to the catcher. My point is that I'm trying
16 to add -- Mr. Bowman, to respond to your point -- is
17 that after in fact the bad pitch occurs, is the
18 response one of outrage or is the response people
19 shrugging their shoulders and say okay, a kid got hit
20 by a pitch. It happens in baseball. It's a fact of
21 life.

22 MR. BOWMAN: Why are you going back?

23 MS. MATTIACCI: Yeah, the first base coach
24 comes down. He goes --

25 THE COURT: Let's see, let's see --

1 MS. MATTIACCI: -- like this and then he, he

2 --

3 THE COURT: -- let's see what -- well why are
4 you describing it to me when we're going to be seeing
5 it hopefully in about 90 seconds, --

6 MR. BOWMAN: Yes, Your Honor.

7 THE COURT: -- 120 seconds?

8 MR. BOWMAN: We're now letting it run.

9 THE COURT: All right.

10 (The judge addresses an unrelated matter)

11 (Video played from 9:41:02 to 9:42:42)

12 THE COURT: Let's stop there for one second.

13 The Appellate Division can take look at the tape and
14 draw their own conclusion.

15 I have to tell you, Ms. Mattiacci, that looks
16 like a pitch he was throwing right at the batter, all
17 right? I don't know what Mr. Williams said or didn't
18 say five minutes earlier, but I can tell you, anybody
19 who looks at that -- and as I said, I wasn't, I wasn't
20 the star, ten-year-old athlete. I did not play in
21 elite little league. But I can tell you that looks
22 like a pitch, it was deliberately aiming for the
23 batter. Now let's keep playing it. --

24 MR. BOWMAN: Sure.

1 THE COURT: -- Anybody that looks at it can
2 draw their own conclusions. That's my conclusion.

3 MR. BOWMAN: And, Your Honor, I -- you've got
4 to say see for yourself. But you can see the third
5 base coach for the SJ Titans and the first base coach
6 from the SJ Titans immediately, rather than check on
7 the batter, walk down to talk to the umpire --

8 THE COURT: Well we'll see, let's play it
9 through.

10 (Video played at 9:43:26)

11 THE COURT: All right.

12 MR. BOWMAN: (Indiscernible) --

13 MS. MATTIACCI: And the next batter, the next
14 batter went up to the plate.

15 (Video stopped at 9:43:48)

16 MR. BOWMAN: Yes.

17 THE COURT: All right. Again somebody can
18 view the tape. I did not see a whole lot of outrage on
19 that field. There may have been some discussion. I
20 can't tell what's discussing -- but I can tell you the
21 most salient thing, S-A-L-I-E-N-T, that I saw, it looks
22 like a very deliberate pitch by the pitcher to strike
23 the batter. That's what it looks like to me.

24 MS. MATTIACCI: Your Honor, he --

1 MR. BOWMAN: We agree with that, Your Honor,
2 and --

3 THE COURT: Thank you.

4 MR. BOWMAN: -- we would submit respectfully
5 that in a situation where three different sources that
6 told him that happened, one who claimed he heard it and
7 where the video seemed to support that, and in the
8 context of reporting the day before --

9 THE COURT: Mr. Bowman, I don't want to cut
10 you off, --

11 MR. BOWMAN: Sure.

12 THE COURT: -- it's already ten of 10:00. I
13 want to go onto the next matter. If there's an appeal,
14 everything you've argued in your briefs are
15 incorporated into the appellate record. I don't want
16 anybody to feel they have to repeat every single
17 argument they've made. It's been made. But I have to
18 tell you, after all the dust settles -- and I just --
19 again, I've seen this tape myself now four or five
20 times. But now that I've seen it again, that very
21 first pitch was not even close. It was aimed at the
22 batter, right?

23 Pitches can be wild, that's true. But I can
24 tell you if I was the parent of that ten-year-old and I
25 had any inkling that the opposing coach had just told

1 the pitcher to strike my kid, I would have been out on
2 the field. And I may have been arrested or ejected,
3 and maybe my position as a judge would have prevented
4 me from making too much of a nuisance of myself. But I
5 would have been outraged.

6 These are ten-year-olds and not major league
7 players and not minor league players and not college
8 players. And it looked like a deliberate, it looked
9 like a deliberate hit to me.

10 But I want to move onto the next allegation.
11 And leaves -- hear first from the Defense what were the
12 sources, what was the basis, what was the next item
13 that survived the previous summary judgment motion?

14 MR. BOWMAN: Well taking them in
15 chronological order, it's the, the use of the MF word
16 at the game the day before on, I think it was May 11th,
17 May 10th.

18 THE COURT: It was by -- allegedly by Mr.
19 Williams to who?

20 MR. BOWMAN: Allegedly by Mr. Williams. The
21 source one reported that --

22 THE COURT: To who?

23 MR. BOWMAN: Oh, --

1 THE COURT: I mean, did, did Mr. Williams
2 just simply yell it out to the field? Did he yell it
3 out --

4 MR. BOWMAN: During --

5 THE COURT: -- to a particular person?

6 MR. BOWMAN: Sorry. During the ejection,
7 Your Honor. That was the, the game that from which --

8 THE COURT: I --

9 MR. BOWMAN: -- Mr. Williams was ejected,
10 argued with the umpire.

11 THE COURT: Mr. Williams was in an argument
12 with the umpire. And Mr. Burke alleged that Mr.
13 Williams called the umpire, using the MF word?

14 MR. BOWMAN: He used the MF word, yes, Your
15 Honor.

16 THE COURT: In front of the kids.

17 MR. BOWMAN: Yes, Your Honor.

18 THE COURT: And what's the source of that?

19 MR. BOWMAN: So the source of that was Mr.
20 Burke -- source one, which is exhibit A of the Burke
21 certification. Source one sent an e-mail tip to Mr.
22 Burke saying --

23 THE COURT: Hold on, what -- exhibit A --
24 I've got about eight different exhibit A's here.

1 MR. BOWMAN: I apologize, Your Honor. This
2 is the Burke certification in which the reporting and
3 attaches all the documents that were submitted.

4 THE COURT: All right. It looks like my, my
5 exhibit A begins with an e-mail May 10th 2014, 8:32
6 p.m. Is that what we're talking about?

7 MR. BOWMAN: That's it, Your Honor.

8 THE COURT: All right. "Coach got kicked out
9 his son's little league game for threatening an umpire
10 at Ripken Stadium". These -- are all of these from the
11 same source?

12 MR. BOWMAN: Yes, Your Honor, this is an e-
13 mail chain.

14 THE COURT: All right. So then Burke
15 responds, "Please tell us more". Mitch is a coach for
16 the Jersey Wild where the son, Declan (phonetic), plays
17 ball. They play the game versus the only pirates. He
18 has been arguably the ball's ... his friend was upset
19 about a play at the plate where his team was called
20 out. "In the top of the fifth while he was coaching,
21 he yelled to another parent (Indiscernible) the umpire
22 fired. The umpire confronted him and Mitch went off.
23 He threatened the umpire, called him an MF'r in front
24 of ten-year-olds. They were face to face, inches from
25 each other arguing. Had to be restrained by other

1 coaches. The umpire rightfully kicked him out. He
2 refused to leave".
3 Is any of this on tape?
4 MR. BOWMAN: No, Your Honor, this was e-mail
5 communications.
6 THE COURT: All right. So source one -- all
7 right. Any other sources specifically allege that in
8 the presence -- I'm not concerned about Mitch Williams
9 calling the umpire a curse word. I'm concerned about
10 the allegation that Mitch Williams called the umpire a
11 curse word in front of ten-year-olds, all right?
12 Anybody else make that specific allegation?
13 MR. BOWMAN: That specific allegation?
14 THE COURT: Yes.
15 MR. BOWMAN: I believe source three did --
16 no, actually -- yeah, source three, which would be
17 exhibit F.
18 THE COURT: F? This is May 11th, 8:10 p.m.
19 MR. BOWMAN: Oh, sorry, yes, exhibit E, Your
20 Honor.
21 THE COURT: Exhibit what?
22 MR. BOWMAN: Exhibit E to the same
23 declaration. And so what, what Mr. Burke did --
24 THE COURT: Let me see what E is.
25 MR. BOWMAN: Yeah.

1 THE COURT: "I can confirm I was ejected for
2 repeated arguments with the umpire. I did not hear him
3 curse." Something is blocked out "players".
4 MR. BOWMAN: Name. "Players who were in the
5 vicinity --
6 THE COURT: This --
7 MR. BOWMAN: -- reported to me that they did.
8 THE COURT: All right, hold on. All right.
9 "I did not hear him curse ... blank. "... players who
10 were in the vicinity ... all right. There was a --
11 what's blacked out is what is the name of a specific
12 player?
13 MR. BOWMAN: It's -- it would be source
14 identifying to -- yes, Your Honor.
15 THE COURT: "I did not hear him curse ...
16 blank. "... players who were in the vicinity reported
17 to me that, that they did". All right, it's weaker,
18 but it's something. All right.
19 MR. BOWMAN: And that in -- I think, Your
20 Honor, the, the reporting is also in the context of --
21 the article had linked to a previous report which is
22 attached, the same certification as exhibit B about a
23 prior incident which Mitch Williams had cursed at a
24 sporting event and answers in part your question about
25 reputation.

1 THE COURT: Exhibit B I have -- it says dead
2 span, "Mitch Williams supports youth athletics, is not
3 at all insane". Is that what you're referring to?

4 MR. BOWMAN: Yes, Your Honor.

5 THE COURT: That's dated March 11, 2008. And
6 Burke stated he specifically knew of this, read of
7 this. What did he say about why this -- when this was
8 in his brain?

9 MR. BOWMAN: This was linked to -- in the
10 article that is challenged in this case.

11 THE COURT: All right.

12 MR. BOWMAN: He said the article says he has
13 a bit of history and linked to this article. So Mr.
14 Burke was aware of this history.

15 THE COURT: Well -- what does this article
16 say that Mr. Williams did previously?

17 MR. BOWMAN: Previously --

18 THE COURT: Does this article in any way
19 suggest that he previously used very foul language in
20 front of ten-year-olds?

21 MR. BOWMAN: Told us yesterday that he was
22 sorry for using the F word while yelling at the ref.
23 Yes, Your Honor.

24 THE COURT: Where is that?

1 MR. BOWMAN: That is in the italicized
2 paragraph.

3 THE COURT: Where it begins "Williams, who
4 now sells his own brand"?

5 MR. BOWMAN: Yes, Your Honor.

6 THE COURT: All right. This -- before I read
7 it, this is something that -- "Williams, who now sells
8 his own brand of salsa and who later this month starts
9 hosting a Phillies pregame show on the Big Talk at 1210
10 (Indiscernible) told us yesterday that he was sorry for
11 using the F word while yelling at the ref. 'I'm
12 emotional when it comes to my kids. What I saw
13 happening was completely unfair.' Williams said,
14 referring to his daughter's team being fouled
15 repeatedly with a lack of calls from the ref." Sorry.

16 So this is something that Williams is
17 apologizing for that occurred before this incident.

18 MR. BOWMAN: Yes, Your Honor. And this is
19 the same incident that resulted in the New York Times
20 story that we had cited in our papers --

21 THE COURT: Okay.

22 MR. BOWMAN: -- in which he discussed.

23 THE COURT: All right.

24 MR. BOWMAN: So, so anyway, the context, so
25 Mr. Burke has source one, told him this happened. Mr.

1 Burke doesn't run with the story. He checks online.
2 He checks social media. He gets a tweet about the
3 ejection --

4 THE COURT: Just so I understand, dated 3-11-
5 08, 2:20 p.m. What does that refer to?

6 MR. BOWMAN: This is a previous report that
7 ran in 2008, Your Honor.

8 THE COURT: All right. So, so the sporting
9 event that Williams is apologizing for occurred
10 sometime before March 11, 2008.

11 MR. BOWMAN: Yes, Your Honor.

12 THE COURT: And the article is published on
13 March 11th 2008 --

14 MR. BOWMAN: Yes, Your Honor.

15 THE COURT: -- and it is linked in this --
16 when this, when this occurred. What was the date of
17 the --

18 MR. BOWMAN: I think it was -- May 11th was
19 the --

20 MS. MATTIACCI: May 11th.

21 MR. BOWMAN: -- article.

22 MS. MATTIACCI: 2014.

23 MR. BOWMAN: 2014.

24 THE COURT: All right, May 24 (sic), fair
25 enough.

1 MR. BOWMAN: The article is attached to the
2 same declaration as exhibit G.

3 THE COURT: All right, fair enough.

4 MR. BOWMAN: And if you look at exhibit G,
5 you can also see the photographs that were provided
6 with source three, which are consistent with a heated
7 argument.

8 THE COURT: All right.

9 MR. BOWMAN: And so --

10 THE COURT: Which source provided -- I have a
11 photograph of Williams about three inches from the face
12 of, of the umpire.

13 MR. BOWMAN: Source three provided that
14 photograph.

15 THE COURT: Source three?

16 MR. BOWMAN: Yeah. And so, so as part of the
17 reporting, Mr. Burke knew of the previous reputation.
18 Source one told him that he used the MF word in front
19 of kids. He attempted to confirm source three, as you
20 may say, weaker, but also said that players told him
21 that was true. Source three provided the photographs.
22 And then source two provided a similar account of a
23 heated argument, although source two said that I
24 couldn't hear him swear from where I was. --

25 THE COURT: Just so I'm clear.

1 MR. BOWMAN: Yeah.

2 THE COURT: We have one source that
3 specifically makes the allegation, --

4 MR. BOWMAN: Yes, Your Honor.

5 THE COURT: -- the clear allegation. I don't
6 care what the number is. A different source says he
7 didn't hear it, but that some of the kids said they
8 heard it.

9 MR. BOWMAN: Yes, Your Honor.

10 THE COURT: And yet, who's the source that
11 provided the photograph between those two? It was the
12 weaker source, right?

13 MR. BOWMAN: Yes, Your Honor.

14 THE COURT: And then you have the 2008
15 article. It doesn't matter who provided it. Nobody is
16 claiming that's a forgery, right?

17 MR. BOWMAN: That's true, Your Honor.

18 THE COURT: But that, that Burke had it when
19 these articles in May 2014 were published, right?

20 MR. BOWMAN: Yes, Your Honor.

21 THE COURT: All right. That's the core of
22 the, of the basis for it, right?

23 MR. BOWMAN: Right. That's the core of the
24 basis. And the last thing I'll say is the context is
25 important because much of what source one said was

1 corroborated by the other sources. We had three
2 sources about the, the confrontation and the ejection
3 --

4 THE COURT: By three. I just see two.

5 MR. BOWMAN: You asked about the MF word.
6 Source one and source three about the MF word. Source
7 two also described the confrontation, although didn't
8 hear the swearing.

9 THE COURT: Right.

10 MR. BOWMAN: But aspects of what source one
11 and source -- that were all consistent with each other,
12 just one heard that.

13 THE COURT: I don't regard -- that, that --
14 the last source that corroborated that there was some
15 argument between the manager or the coach and the
16 umpire, that to me is anemic. Even in little leagues
17 coaches argue with refs. It's part of the culture.

18 MR. BOWMAN: Right. It's only relevant to
19 the extent, Your Honor, that if we're trying to get in
20 Mr. Burke's head and ask is there clear and convincing
21 evidence that he knew this was fabricated --

22 THE COURT: I understand that, but I --

23 MR. BOWMAN: -- he has multiple sources
24 telling him similar things, I think it's relevant.

1 THE COURT: I get it. I don't give it much
2 weight. All right.
3 MR. BOWMAN: So, so that's what he had. And
4 --
5 THE COURT: All right. Ms. Mattiacci?
6 MS. MATTIACCI: Yes, so this --
7 THE COURT: What, what do you have -- do you
8 have anything that specifically contradicts this? Do
9 you have any evidence that was -- I want to be clear
10 before I allow you to go further. Any evidence that
11 when Burke published this article, that he, he -- he
12 being Burke -- actually had contradictory evidence?
13 MS. MATTIACCI: Yes, source two. "I did not
14 hear him curse". Source two follows up. After that
15 first female --
16 THE COURT: Are you talking about the same
17 exhibit that was just brought to my attention a few
18 minutes ago?
19 MS. MATTIACCI: I think so, but two pages,
20 two pages in.
21 THE COURT: Well hold on. Is this part of
22 the Defense's exhibit package?
23 MR. BOWMAN: Yes, Your Honor.
24 MS. MATTIACCI: Yes.
25 THE COURT: Which letter was it again?

1 MS. MATTIACCI: In the Defense's, I think it
2 was --
3 MR. BOWMAN: I believe it's C.
4 THE COURT: C?
5 MS. MATTIACCI: So you see the first -- the
6 e-mail that he drew your attention to was May 11th at
7 9:04.
8 THE COURT: Yes, I have that, right.
9 MS. MATTIACCI: Okay. So you go two pages
10 over.
11 THE COURT: Hold on.
12 MS. MATTIACCI: To May 11th --
13 THE COURT: I don't have, I don't have --
14 mine doesn't have anything two pages over.
15 MS. MATTIACCI: Okay. So we have to look in
16 plaintiff's binder, Your Honor, so they didn't include
17 it then.
18 MR. BOWMAN: We did include it actually.
19 I'll give you the --
20 THE COURT: Somebody have an extra they can
21 just hand it up, rather than me trying to find it in
22 all this?
23 MS. MATTIACCI: Yes, Your Honor.
24 MR. BOWMAN: It's exhibit I, Your Honor.

1 THE COURT: Exhibit I, all right. Make sure
2 we're on the same page. It begins, "Sunday, May 11th
3 2014, 8:45 p.m. to Timothy Burke, re: pic of Williams",
4 is that -- are we all on the same page?

5 MR. BOWMAN: Actually H, Your Honor, H and I
6 are both the follow-up of that source.

7 THE COURT: H.

8 MR. BOWMAN: H, yeah. "May 11th 2014, 8:44
9 p.m., pic of Williams".

10 MS. MATTIACCI: Right. --

11 MR. BOWMAN: Yes, Your Honor.

12 THE COURT: All right.

13 MS. MATTIACCI: -- The middle one, the 8:41,
14 "Tim, --

15 THE COURT: All right.

16 MS. MATTIACCI: -- I never stated that
17 Williams called the ump a MF, mother F. I have an
18 issue with what he did, but that information did not
19 come from me".

20 THE COURT: All right. Is this from the same
21 source that had previously said that Williams did call
22 the umpire --

23 MS. MATTIACCI: No.

24 MR. BOWMAN: No. And if you read above that,
25 he responded, "I know you didn't. Another parent did".

1 THE COURT: Well, Ms. Mattiacci, how does
2 this contradict -- how is this contradictory? This
3 source doesn't --

4 MS. MATTIACCI: Because this is --

5 THE COURT: -- never said that he heard
6 Williams. Is this the same source that said he didn't
7 hear it, but that the, the -- some of the players heard
8 it?

9 MS. MATTIACCI: No, that's source number
10 three.

11 THE COURT: So this is --

12 MS. MATTIACCI: This is source -- I'm saying
13 --

14 THE COURT: -- a completely different source.

15 MS. MATTIACCI: -- it's contradictory because
16 this is a witness that's standing right there during
17 this event, does not hear any cursing. And the other
18 -- source three is also standing there during the event
19 and does not hear any cursing. Mr. Burke never reaches
20 out to the plaintiff to get any -- to, to get
21 corroboration for the plaintiff.

22 The statement -- Mr. Burke says in his
23 article, observers, plural. "Observers tell us
24 plaintiff called umpire a MF'r." There -- he does not
25 have observers. He has one person. And if he was

1 truthful and not purposely avoiding the truth, he would
2 say witnesses who were standing nearby never heard
3 that. He would -- he never contact --

4 THE COURT: How do I know? I'm looking now
5 at the exhibit you just referred to. How do I know
6 where this source was, whether or not he was in a
7 position or she was in a position to have heard it if
8 in fact it was stated?

9 MS. MATTIACCI: Because he just -- this
10 witness describes the events in -- at 9:04 a.m.

11 THE COURT: Hold on, where's that?

12 MS. MATTIACCI: That was the original one
13 that we were looking at. I'm not sure what they are in
14 the defendant's binder. It should be the previous
15 pages, the -- it should be the first page of that e-
16 mail chain.

17 THE COURT: Anybody in the Defense know --
18 I'm looking --

19 MR. BOWMAN: Yeah, exhibit C is the initial
20 e-mail chain with source two, Your Honor.

21 THE COURT: All right. So this is source
22 two.

23 MR. BOWMAN: Right. Source one --

24 MS. MATTIACCI: The getting the pictures.

1 MR. BOWMAN: -- was the one who was the
2 original --

3 THE COURT: Hold on, --

4 MR. BOWMAN: -- and source three --

5 THE COURT: -- hold on.

6 MR. BOWMAN: -- right. And this is source
7 two.

8 THE COURT: "Tim, it was such ... and this is
9 what you're referring to, Ms. --

10 MS. MATTIACCI: Yes.

11 THE COURT: -- all right. "Tim, it was such
12 (Indiscernible). I guess I can confirm it. I'm
13 working on getting you some pictures of him in the
14 umpire's face. He was arguing with calls and making
15 comments to both of the umpires all game. He was
16 coaching first base since the game was going on. And
17 the second base umpire threw him out. He said he was
18 making a comment to one of the parents in the stands.
19 When the second base umpired tossed him, he was making
20 comments the whole game about bad calls. And the
21 second base ump just had enough. He went nuts."

22 That doesn't help you, Ms. Mattiacci. "He
23 got in the umpire's face like it was in the major
24 leagues. I will get, I will get you a few of the
25 pictures or post them on Twitter. He claimed that the

1 umpire was about 65-years-old, threatened him. He said
2 to pick a place, a time and place to fight Mitch."

3 MS. MATTIACCI: Right. There's no cursing
4 though, there's no cursing. --

5 THE COURT: I understand that. --

6 MS. MATTIACCI: -- He didn't hit anybody --

7 THE COURT: -- But again, I don't -- I'm not,
8 just so the record is clear, I'm not putting this under
9 an electron microscope, all right? It doesn't help you
10 that the, the best source you have -- you're right.
11 That does say I never heard Mr. Williams use the MF'r
12 word. That is your best source.

13 But he also says "he went nuts", which
14 doesn't depict somebody who is in complete control of
15 themself when he's having a dispute with the umpire.
16 "The game was delayed for about ten minutes, as he
17 needed to call in an official from Ripken until he was
18 finally removed. It was crazy. Never saw a player get
19 ejected from a game and not leave".

20 Who's he referring to in that, never saw a
21 player get ejected?

22 MS. MATTIACCI: But --

23 THE COURT: Who is he referring to?

24 MS. MATTIACCI: I have no idea. But, Your
25 Honor, this is --

1 THE COURT: No, that's not a rhetorical
2 question. --

3 MS. MATTIACCI: -- false.

4 THE COURT: -- Is it -- was it -- Mr.
5 Williams wasn't a player. Who was the player?

6 MS. MATTIACCI: No, I have no idea what --

7 THE COURT: Anybody know?

8 MR. BOWMAN: I think, Your Honor, that was a
9 misstatement. I think he was referring to -- there was
10 never --

11 THE COURT: Well did anybody get ejected from
12 the game other than Mitch Williams?

13 MR. BOWMAN: Anybody. No, Your Honor.

14 THE COURT: Ms. Mattiacci, let's not play
15 games. He's referring to Mitch Williams. He never saw
16 a player -- and not leave? This is all going on while
17 ten-year-olds are playing baseball? This is not a
18 close case, Ms. -- this allegation is not close.

19 MS. MATTIACCI: But it's a false statement of
20 fact. It says observers --

21 THE COURT: I'm pulling the trigger on it.
22 This is not close. A source said he heard it. There
23 is some contradictory evidence. But even your best
24 source is depicting somebody that's out of control,
25 who's being described by your most favorable source as

1 "he went nuts" and "never saw a player", that's
2 obviously a mistake. Mr. Williams is not a ten-year-
3 old player. He's the coach. "... get ejected from the
4 game and not leave. This is all going on while ten-
5 year-olds are playing baseball, trying to play ...
6 actually he says basketball. He makes another mistake.

7 MS. MATTIACCI: Your Honor, it's not true
8 though. --

9 THE COURT: All right. That's why --

10 MS. MATTIACCI: -- It's not true as --

11 THE COURT: -- take an appeal, Ms. Matti --
12 take an appeal. --

13 MS. MATTIACCI: Okay.

14 THE COURT: -- This is not close, all right?
15 I don't know if Mr. Williams said it. All I know is
16 that based upon what this reporter had, all right,
17 there's no evidence, nothing clearly and convincingly
18 that somehow this reporter knew that this was an
19 absolutely false allegation.

20 MS. MATTIACCI: May I just state for the
21 record, Your Honor, it's not --

22 THE COURT: If it's not something con -- is
23 it something already not contained or argued in your
24 brief?

1 MS. MATTIACCI: I'm -- I don't -- I'm just
2 saying that the -- well I guess -- I don't know. He,
3 he never contacted the plaintiff or anybody from
4 Ripken. What ended up happening was the umpire got
5 ejected from the tournament and Mr. Williams was
6 reinstated because it was the umpire who threatened
7 him.

8 THE COURT: I, I understand, --

9 MS. MATTIACCI: That would be a truthful --

10 THE COURT: -- I understand that.

11 MS. MATTIACCI: -- recount, that he was
12 purposely --

13 THE COURT: I thought the reporter --

14 MS. MATTIACCI: -- avoiding the truth.

15 THE COURT: -- yeah. I agree with you that
16 this reporter should have had -- by the way, just so
17 I'm clear, did the reporter ever try to reach out to
18 Mr. Williams --

19 MS. MATTIACCI: Never, never.

20 THE COURT: -- I'm asking, I'm asking -- let
21 me ask Mr. --

22 MR. BOWMAN: A couple of corrections there.

23 --

24 THE COURT: -- Bowman.

1 MR. BOWMAN: -- The reporter did call Ripken
2 Baseball. Ripken Baseball didn't return his call. He
3 did attempt to contact the umpire. He did not
4 personally attempt to contact Mr. Williams. He
5 included Mr. Williams' tweets and statements in his
6 story and recounted his response, that I was pitching
7 inside. But he didn't individually contact --

8 THE COURT: No, no, but did Mr. Williams
9 tweet about --

10 MR. BOWMAN: Yeah.

11 THE COURT: -- whether or not he had used a
12 foul word in front of the kids?

13 MR. BOWMAN: No, Your Honor, he tweeted his
14 version of what happened during the ejection and that
15 was included in the story.

16 THE COURT: All right. Well frankly, and
17 I'll say this for the record. The reporter should have
18 given Mr. Williams a call and asked him about it. And
19 of course, if Mr. Williams denied, put the denial in
20 the, in the article. Fundamental fairness required
21 that --

22 Ms. Mattiacci, you know the law in regard to
23 defamation with public officials, celebrities and the
24 like doesn't require that.

1 MS. MATTIACCI: It doesn't require that in
2 and of itself. But looking at the totality of how it
3 was handled, whether it -- was there a purposeful
4 avoidance of the truth here? Absolutely.

5 THE COURT: Absolutely not. This, this is a
6 much easier case. Your best source -- I don't need to
7 look at the tape. Your best source describes your
8 client as somebody that was out of control, all right?
9 This is not close.

10 MS. MATTIACCI: Well that's not my best
11 source. I mean, that's the only source that, that
12 (Indiscernible) --

13 THE COURT: I understand that, but --

14 MS. MATTIACCI: -- the call.

15 THE COURT: -- this looks like a credible --
16 you know something? To me, if I'm the reporter, I like
17 this source. It is not somebody that has -- he or she
18 doesn't look like they have an ax to grind against
19 Mitchell Williams. This is the same person that says
20 to the reporter, just so you know, I did not hear Mr.
21 Williams use the MF'r word. He takes the trouble of
22 texting, e-mailing the reporter to make sure that he
23 did not hear it. This is somebody that is trying to
24 give as best as they can an accurate recitation of what
25 happened. This doesn't look like somebody that's

1 simply trying to smear Mr. Williams' name. And this
2 person says "he went nuts" et cetera, et cetera, et
3 cetera.

4 MS. MATTIACCI: Right. But, Your Honor,
5 that, that -- if that was what was written in the
6 article, we wouldn't be here today because it doesn't
7 --

8 THE COURT: And if we give him the First
9 Amendment, reporters couldn't do what this reporter
10 particularly did, which was -- I agree with you. It
11 looks like he, he was depicting Mr. Williams in a very,
12 very poor light, but he had sources that justified him
13 doing it. He wasn't inventing it from thin air.

14 What's the third issue --

15 MS. MATTIACCI: Well --

16 THE COURT: -- that we need to resolve? I'm
17 moving forward.

18 MS. MATTIACCI: -- okay. Let me just -- can
19 I just state for the record he was --

20 THE COURT: Yeah.

21 MS. MATTIACCI: -- making it up. Observers
22 tell us, he doesn't have observers. He said it was a
23 profanity laced tirade. There is no profanity laced
24 tirade. Even if you accept that he said by one source
25 at one time, he said the MF word, there -- that, that

1 is not a profanity laced tirade. He was making stuff
2 up to make it something that is click bait, so that
3 people will click on it. Because they're not going to
4 click on something that says Mr. Williams got in, got
5 in an argument with the umpire. Nobody cares about
6 that.

7 So they have to ratchet it up and say
8 observers tell us that he said MF'r, that it was a
9 profanity laced tirade. There's no evidence of that
10 whatsoever. Yet he printed it anyway. And that's --
11 to, to just defame him and, and to make money off of
12 it.

13 THE COURT: All right. Mr. Bowman, anything
14 you want to -- I'll give you a few minutes. And then
15 I'm going to move onto what is probably the remaining
16 allegation of a defamatory utterance that I did not
17 grant previous summary judgment on.

18 MR. BOWMAN: Yeah, I don't think I need to
19 add anything.

20 THE COURT: Actually I think it's the 46
21 Tinley (phonetic) motion. It was a motion to dismiss.

22 MR. BOWMAN: Yes, Your Honor. I, I don't
23 think I need anything to the MF word. The record --

24 THE COURT: All right. What's the final --
25 what's the last --

1 MR. BOWMAN: -- speaks for itself.

2 THE COURT: -- what's the last issue?

3 MR. BOWMAN: The last allegation is that Mr.
4 Williams used the P word to refer to another player.
5 And that, of course, happened in the context of --

6 THE COURT: Was that the first day or the
7 second day?

8 MR. BOWMAN: The second day, Your Honor. So
9 the, the -- there were five games over two days. The
10 -- there was a loss on Saturday where Mr. Williams was
11 ejected and argued with the umpire, and as a result of
12 the first story.

13 The next day there was another game, the
14 championship game, where the batter was struck and
15 where the other sources came forward. So in -- after
16 having reported the first story about the, the Saturday
17 game, there were -- sources started contacting Mr.
18 Burke again.

19 And if you look at exhibit L, this is a
20 contact by source four on Facebook. And he says --

21 THE COURT: This is source what?

22 MR. BOWMAN: I'm sorry, this is exhibit L,
23 Your Honor.

24 THE COURT: I have it. What is the source,
25 source what?

1 MR. BOWMAN: This is source four, Your Honor.

2 THE COURT: Four.

3 MR. BOWMAN: Essentially --

4 THE COURT: "What an unbelievable douche bag
5 Mr. Williams acted like all weekend. He's an
6 embarrassment. Can you give any examples of this
7 behavior? B-W-A-H-A-H-A, boy, can I."

8 MR. BOWMAN: Right. And then so --

9 THE COURT: Hold on. Where are the --
10 where's the allegation?

11 MR. BOWMAN: That was the initial contact.
12 And the next exhibit, exhibit M, Mr. Burke said, "Can
13 you give me examples of what you're talking about?"
14 And source four then sent a long e-mail, which is
15 exhibit M.

16 THE COURT: My exhibit M is not a long e-
17 mail. My exhibit M is May 13th 2014 --

18 MR. BOWMAN: I'm sorry, M, M, Your Honor.

19 THE COURT: M, M as in Michael, that's what
20 I'm looking at.

21 MR. BOWMAN: Yes. It's May 13th 2014 --

22 THE COURT: Yeah, this is what I got.

23 MR. BOWMAN: -- Tim -- yes, well a page-long
24 e-mail.

25 THE COURT: It's not a long e-mail.

1 MR. BOWMAN: Is it the -- marked exhibit P-
2 19, Your Honor, at the bottom?

3 THE COURT: It says Gawker 0052.

4 MR. BOWMAN: 0051 is the first page of that,
5 Your Honor. Is that --

6 THE COURT: I don't have it, don't have it.

7 MR. BOWMAN: -- page got omitted in your
8 copy?

9 THE COURT: Yeah, yeah.

10 MR. BOWMAN: Can I bring you that?

11 THE COURT: Uh-huh, sure.

12 MR. BOWMAN: Let's see here, certification.

13 H, K, K -- yeah.

14 THE COURT: Thank you.

15 MR. BOWMAN: I apologize, Your Honor, if that
16 was --

17 THE COURT: That's all right.

18 MR. BOWMAN: -- missing from the documents I
19 provided.

20 THE COURT: Yeah, it was. Because the
21 problem is, is that you have -- it's on the -- you have
22 two, you know, back and front copying. This doesn't
23 have -- this wasn't back and front. What you're
24 referring to should have been on the back of this and
25 it wasn't.

1 MR. BOWMAN: Yes, sorry. It's two-sided
2 copying. It's exhibit M to the Burke certification.

3 THE COURT: So in addition now to whatever
4 duties you have as an attorney, you have to make sure
5 that when you ask somebody to copy something and it
6 requires both front and back copying, that they do it.

7 All right. "Tim, not only did I witness the
8 Mitch Williams' incident on Saturday, also saw first-
9 hand how he acts when we played his team in the title
10 game of the tournament yesterday (Sunday). As far as
11 Saturday, he played on the field next to us, so I
12 figured I'd catch some of their game since we might
13 wind up playing them. He was so in the wrong, it's not
14 even funny! The umpire was not, N-O-T the aggressor,
15 nor did he get really mad until Mitch just became
16 overbearing!

17 He basically was questioning every call,
18 balls and strikes, bitching, whining, et cetera. He
19 was basically a horse's ass. While he was -- well it
20 really exploded on a very close play. He went off
21 cursing the ump, yelling at a spectator or two or
22 three. He was extremely embarrassing. And for a coach
23 of a ten-year-old team, it was, it was sad to look at!

24 He was subsequently kicked out and then
25 refused to leave. He should have been banned ... it

1 says for the tournament. "... but my better guess that
2 he made a phone call or two. He used his influential
3 powers, so to speak. Now mind you, I'm watching this
4 as a neutral observer, so I have cross to bear here."

5 He's using the wrong cliché, but that's a
6 different point. No ax to grind is probably what he
7 meant. "It didn't bother me either way who won. His
8 attempt to cover up and put his spin on it via Twitter,
9 a blatant misguided information in an attempt to spin
10 things his way. Anyone who was there can tell you what
11 really happened. Of course, he and his organization
12 will deny a well different version to cover their
13 butts.

14 But, however, this brings to me -- this bring
15 me to yesterday, a Tyler (phonetic) game versus us.
16 Right from the get-go he is tipping off pitches to his
17 kids, wasn't at one point heard to say by a couple of
18 coaches and a couple of players throwing pitches, don't
19 act like a little P. There's ... all right.

20 "I personally didn't hear that, although I
21 don't know why our coaches or kids would make it up.
22 Every time he would come over to coach first base, he
23 would look to start something with our coaches. He
24 then went on to hold up the game, complaining about
25 substituting players and such.

1 Later in the game, and obviously this can't
2 be proven, when our pitcher came out to bat, our
3 coaches had said something to the home plate umpire,
4 warning him, thinking that our kid was going to be
5 thrown at. Well don't you know it, the first pitch to
6 our pitcher batting hits him. Umpire and tournament
7 director then warned everyone. His son, who was
8 catching most of the day, was talking crap to our kids
9 all day.

10 Basically in a nutshell both days I saw this
11 guy. He acted like an arrogant, classless, foul-
12 mouthed tool bag and definitely not someone I want
13 coaching my kids."

14 And there's a black out. "... can be found
15 on Facebook and can not only verify this, but possibly
16 give you more info on the Sunday game ... as again, we
17 have more black out. "He said he'd be more than
18 willing to talk to you. As of yesterday I was told
19 that Ripken people are having a meeting regarding Mr.
20 Williams. Good luck". All right.

21 Any corroboration of this?

22 MR. BOWMAN: That was source four. So Mr.
23 Burke then -- I'll skip over source five. Source five
24 is generally corroborating about other reputation.
25 Again, you asked earlier whether Mr. Burke knew

1 anything about his reputation. That's relevant to
2 that.

3 But source six is the person whose
4 information was provided by source four. If you turn
5 to exhibit O. And if you don't have the two-sided
6 copies, I have an extra set here.

7 THE COURT: Yeah, hold on.

8 MR. BOWMAN: Let's give him -- let me give
9 all the Burke exhibits.

10 THE COURT: It looks like stuff from
11 Facebook. Oh, specifically does any source corroborate
12 the allegation that Mr. Williams was calling kids,
13 using the P word?

14 MR. BOWMAN: Yes, source six, Your Honor. --

15 THE COURT: All right, let me --

16 MR. BOWMAN: -- We're going to hand you
17 exhibit O.

18 THE COURT: All right.

19 MR. BOWMAN: What we're handing up, Your
20 Honor, is the entire Burke certification tab with all
21 of the double-sided exhibits that you were not given.

22 THE COURT: O?

23 MR. BOWMAN: Yes, O, Your Honor.

24 THE COURT: Right. All right. "Can you tell
25 me any more about Mitch Williams' behavior this

1 weekend, specifically what he said to your pitcher? I
2 heard it was especially inappropriate. Thanks. He tur
3 -- he walked by our catcher. And after the first
4 inning he said that pitcher, he said that pitcher is a
5 P word. A couple of our other kids heard him. And one
6 kid asked his parents on the way home why he would call
7 our pitcher names and asked him what it meant.

8 He also called his pitcher and catcher to the
9 side before the bottom and told him ... back to the
10 other --

11 MR. BOWMAN: You've already got that part,
12 Your Honor.

13 THE COURT: All right, all right.

14 MR. BOWMAN: And then the, the last bit of
15 corroboration is not in an e-mail. This -- Mr. Burke
16 had another source he tracked down, exchanged e-mail
17 with that person. The e-mail is at exhibit P. Mr.
18 Burke set up a phone call with that person. When
19 deposed Mr. Burke didn't remember all the details of
20 the phone call, but Mr. Burke said that that -- during
21 that phone call it was his understanding -- this is
22 source seven -- confirmed both the P comment and the,
23 and the hit by -- instruction --

24 THE COURT: All right. Source --

25 MR. BOWMAN: -- to hit the batter.

1 THE COURT: -- seven you're alleging that
2 source seven was a verbal corroboration rather than an
3 e-mail or a fax or something like that?

4 MR. BOWMAN: It was a telephone conversation,
5 Your Honor. And that those were the sources. The
6 contexts of --

7 THE COURT: I get it, I get it. Ms. --

8 MR. BOWMAN: -- the previous day and from
9 these sources.

10 THE COURT: -- I get it, I get it.

11 Ms. Mattiacci?

12 MS. MATTIACCI: Okay. So it's not all these
13 sources. They cite three people, none of which heard
14 it first-hand, none of them. Source four says "I
15 personally did not hear that". Source six says "I
16 didn't hear it". And source seven also says --

17 THE COURT: Well source six, source six is
18 more detailed. Can I, can I impose of Mr. Hughes
19 (sic)?

20 MR. BOWMAN: Mr. Bowman.

21 THE COURT: Mr. -- no, I know you're Mr. --
22 You're Mr?

23 MS. MATTIACCI: Kelley.

24 THE COURT: Mr. Kelley. --

25 MR. BOWMAN: Kelley.

1 THE COURT: -- Mr. Kelley, do you want to
2 give me that -- I gave it back to you prematurely. But
3 that's a very detailed e-mail. And I'm again, going to
4 get to the key point here.

5 MR. KELLEY: We'd be happy to leave this with
6 the Court. It's got a clip on it now.

7 THE COURT: You see all this stuff here? I'm
8 not looking for more.

9 MR. KELLEY: I realize that.

10 THE COURT: Exhibit what, which exhibit was
11 it?

12 MR. KELLEY: Exhibit six is exhibit M, Your
13 Honor -- or I'm sorry, source six was exhibit M.

14 THE COURT: All right. Now I got nothing in
15 exhibit M.

16 MR. BOWMAN: Oh, I'm sorry. Oh, four was M.
17 My apologies, Your Honor. It's O.

18 THE COURT: All right. Six is O.

19 MR. BOWMAN: Yes.

20 THE COURT: All right. "He walked by our
21 catcher and after the first inning he said that pitcher
22 is a P word. A couple of other, a couple other of our
23 kids heard him and one kid asked his parents on the way
24 home why he would call our pitcher names and asked him
25 what it meant." All right.

1 It's not clear what the source did or didn't
2 hear, but that's very specific information that's
3 coming from a different source. And there's a specific
4 allegation that one of the kids asked his parents what
5 it meant, which actually has a ring of voracity to it.

6 MS. MATTIACCI: Yeah, Your Honor, this is --
7 they -- he did not follow-up with anybody. He didn't,
8 he didn't -- this is -- none of these statements say
9 that the person actually heard it. The only person
10 that allegedly had heard this is the catcher. He
11 doesn't talk to the catcher. He doesn't talk to the
12 catcher's parents. He doesn't talk to the coaches of
13 the teams. He -- the coaches of this kid's team sent
14 e-mails in that said they never heard him use any curse
15 words, never heard him order a bean ball or the
16 intentional hit of a kid.

17 THE COURT: What's the, what's -- what is --
18 what do you have, what do you have specifically that
19 was given to Burke that actually contradicts this?

20 MS. MATTIACCI: No, I'm saying that failure
21 --

22 THE COURT: No, but did anybody -- did, did
23 Burke have anything -- again, I want to emphasize for
24 the record, it's obvious. This is not a murder
25 investigation, all right? This is one reporter who's

1 getting information from, it looks like irate parents,
2 making allegations. The law doesn't obligate him to
3 track down every possible lead to make sure that he
4 doesn't falsely accuse a former professional athlete of
5 using a foul word. These parents are accusing Mr.
6 Williams of using an inappropriate word in the presence
7 of the kids.

8 And while I agree with you, it doesn't appear
9 that any, any of these parents specifically allege it
10 in their e-mails or texts that they actually heard it,
11 they are clearly indicating that the kids heard it.
12 And of particular importance is this source six alleges
13 that one of the kids asked his parents basically what
14 the word meant, which either if it had happened --
15 either it's completely fabricated -- I'm not talking
16 about the use of the P word. Either this source is
17 completely fabricating that a kid asked his parent what
18 the word meant or if happened.

19 And it's highly corroborative since I didn't
20 know what the word meant when I was ten-years-old in
21 any particular context. And that's exactly what you
22 would expect a ten-year-old to do if he hears an adult
23 use a word in anger and the kid doesn't know what the
24 word means.

1 But do you, but do you have anybody that
2 wrote in to Burke and said I was there the whole time.
3 I was in a position to hear everything, and, and Mr.
4 Williams never used any obscene language?

5 MS. MATTIACCI: How would anybody have
6 written that in beforehand when they didn't know that
7 he was going to put that false allegation in, in an
8 article?

9 THE COURT: Well they may not have. I, I --
10 they may not have.

11 MS. MATTIACCI: So if, if -- you can't -- Mr.
12 -- the obligation of the reporter is to pursue most
13 obvious, available sources for corroboration. Because
14 as the New Jersey courts have said, --

15 THE COURT: All right. This is, this is
16 another example where the reporter never directly gave
17 Mr. Williams a phone call and said you know what, there
18 are allegations here that you -- that you're using in
19 front of these ten-year-old kids the P word. What's
20 your response? That was never done?

21 MR. BOWMAN: No, Your Honor, that was never
22 done.

23 THE COURT: All right. I agree, that's
24 really shoddy, S-H-O-D-D-Y. And the record should be
25 clear, I don't approve of that at all. Before an

1 article is published about either an athlete or
2 celebrity alleging that type of behavior in front of
3 ten-year-olds, the subject of the allegation should be
4 contacted and asked for their position. And if they do
5 deny it, that should be placed in the article.
6 Fundamental fairness requires that.

7 But, Ms. Mattiacci, I don't believe the law
8 under New York Times v Sullivan requires it. --

9 MS. MATTIACCI: I believe there that the
10 courts, that the --

11 THE COURT: Argue it to the Appellate
12 Division. --

13 MS. MATTIACCI: Okay.

14 THE COURT: -- And that should be the case.
15 I have no problem with it. It should have been done.
16 I agree with you, by the way. It's inexcusable.

17 MS. MATTIACCI: There's also not just Mr.
18 Williams, but how about the coaches of the other team
19 who were in the vicinity? They were never contacted.

20 THE COURT: All right, all right. I'm
21 granting the motion for summary judgement. --

22 MS. MATTIACCI: And the catcher.

23 THE COURT: -- I got it. You're going to
24 have to make your argument in Trenton. Let Trenton
25 impose an obligation. I'm not fighting you on it. I

1 think it should have been done. If Mr. Williams didn't
2 say it and the article contained his denial, it would
3 have been a fairer depiction of what occurred. I don't
4 know what happened there.

5 But I can say with full confidence I don't
6 believe Burke, when this stuff was published, was
7 convinced he was publishing a pack of lies. He may
8 have had his own ax to grind. He may very well have
9 wanted to sell to subscribers of the --

10 Does it require a subscription to the Gawker?
11 Can anybody read this stuff? What does it require?

12 MS. MATTIACCI: They make money off of ads.
13 Any time something --

14 THE COURT: Advertisements, all right.

15 MS. MATTIACCI: -- gets clicked on. Maybe
16 that's why they have to make their headlines --

17 MR. BOWMAN: Like every other --

18 MS. MATTIACCI: -- as salacious as possible.

19 MR. BOWMAN: -- website, Your Honor. It's a,
20 it's a --

21 THE COURT: That's the economic model these
22 days. That's why newspapers are going out of business.
23 How do you, how do you sell newspapers for \$1.50 when
24 you can get this stuff for free?

1 MS. MATTIACCI: Well they're trying to make
2 money by publishing false and defamatory statements
3 about people that ruining their lives.

4 THE COURT: That may be the case, but --

5 MS. MATTIACCI: They're ruining their lives,
6 Your Honor, because they have no -- and they don't --
7 they note -- they have video evidence that it's not
8 true. They put in salacious headlines that cause the
9 MLB Network to pull him off the air. And now he cannot
10 support his children --

11 THE COURT: Well that's a separate issue, but
12 that's a separate, that's a separate issue. That's,
13 that's --

14 MS. MATTIACCI: No, it's not a separate
15 issue, Your Honor.

16 THE COURT: No, I haven't granted summary
17 judgment to the MLB Network. And I've indicated, I
18 think it was Friday, that I personally -- and the law
19 supposedly supports me -- is that you can't use the
20 moral clause to yank somebody's source of income if
21 they're living if the allegation isn't true. This is a
22 defamation cause of action. This is not your breach of
23 contract cause of action against MLB Network. We, we
24 do have Mr., Mr. Hughes is it, --

25 MR. HUGHES: Yes, Your Honor.

1 THE COURT: -- sitting there. And he's your
2 adversary in that. But I strongly believe that the
3 moral clause ought to be interpreted in such a way that
4 it actually matters whether or not the person committed
5 the alleged immoral conduct. If a person didn't, they
6 shouldn't have their livelihood stripped away from
7 them. That's a different day and that's not what we're
8 talking about here.

9 All right, let me return -- so before you
10 leave I want an order to sign. Let me return this to
11 you, Mr. --

12 MR. KELLEY: Kelley.

13 MS. MATTIACCI: Kelley.

14 THE COURT: -- Kelley, thank you.

15 MR. KELLEY: Thank you, sir.

16 THE CLERK: And it's spelled the same way as
17 Judge Kelley.

18 THE COURT: I don't even know how Judge
19 Kelley's last name is spelled. I never bother to write
20 to him.

21 THE CLERK: It has an E in it.

22 THE COURT: That's fascinating to note. All
23 right.

24 MR. KELLEY: The E is my cross to bear.

1 THE COURT: All right. I'm using that
2 correctly then. All right.
3 (Proceedings concluded)
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1 CERTIFICATION

2
3 I, Mary Nelson, the assigned transcriber, do
4 hereby certify the foregoing Transcript of Proceedings
5 in the Camden County Superior Court, Law Division, on
6 June 1, 2016 and digitally recorded from 9:01 to 10:22,
7 is prepared in full compliance with the current
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9 true and accurate compressed transcript of the
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